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A L S O P R E S E N T :

SHANNON PHILLIPS, Plaintiff
ROBYN RUDERMAN, ESQUIRE, Starbucks Corporation
MARCUS ECKENBERGER, Starbucks Corporation
MATTHEW HIGGINS, Courtroom Deputy

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1 (PROCEEDINGS held in open court before The Honorable
2 JOEL H. SLOMSKY at 9:29 a.m.)

3 THE COURT: Please be seated.

4 Let's wait for Mr. Harris.

5 MS. PARAM: Thank you.

6 MR. HARRIS: Good morning, Your Honor.

7 THE COURT: Okay. Counsel, I just wanted to bring to
8 your attention, I noticed something else on the verdict slip
9 that should have been included. And that is after question
10 11, I think on your version, it says: If you answered yes to
11 question 11, please proceed to question 12.

12 And I added "If you answered no to question 11, your
13 deliberations are finished and you are to follow the
14 instructions after question 12," because they wouldn't know
15 what to do at that point. All right?

16 So I added that to the jury instruction.

17 MS. MATTIACCI: Okay, Your Honor. Thank you.

18 THE COURT: And two slight changes to the jury
19 instructions.

20 I made that change to the Jury Verdict Form, but I
21 have two slight changes to the jury instructions.

22 Let's see. The first one would be on page 17. And
23 in the third full paragraph, I changed the word "of" to
24 "under." It is permissible for a plaintiff to allege a claim
25 under these two civil rights statutes. All right?

1 And the only other changes that we noticed -- in the
2 mixed motive charge under Title VII on page 20 -- page 21, if
3 you look under the charge on pretext, if you look on page 18,
4 at the very bottom, it says: You should weigh all the
5 evidence received in this case in deciding whether defendant
6 intentionally discriminated against plaintiff.

7 And for some reason, that language was not included,
8 and it should have been in the mixed motive instruction. So
9 we added to page 21, after the "although" paragraph, "Although
10 plaintiff must prove" -- I don't think your copy has the next
11 sentence as a separate paragraph in and of itself saying: You
12 should weigh all the evidence received in this case in
13 deciding whether defendant intentionally discriminated against
14 plaintiff.

15 It should be parallel to the other instruction.

16 MR. HARRIS: Yes.

17 MS. MATTIACCI: Okay.

18 MR. HARRIS: Yes.

19 THE COURT: All right? So those are the only changes
20 made over the weekend break.

21 MR. HARRIS: Your Honor, could we have a copy of the
22 final version?

23 THE COURT: Oh, yes. Yes, we have copies for you of
24 the final instructions and the verdict sheet.

25 MR. HARRIS: Thanks.

1 THE COURT: All right. And at this point, we can
2 bring in the jury, and I'll instruct them on the law.

3 (Jury in.)

4 THE COURT: Please be seated.

5 Good morning, members of the jury.

6 RESPONSE: Good morning.

7 THE COURT: Everyone had a good weekend?

8 Members of the jury, now that you have heard the
9 evidence and the arguments, it is my duty to instruct you on
10 the applicable law. It is your duty to follow the law as I
11 will state it and to apply it to the facts as you find them
12 from the evidence in the case. Do not single out one
13 instruction as stating the law, but consider the instructions
14 as a whole. You are not to be concerned about the wisdom of
15 any rule of law stated by me. You must follow and apply the
16 law.

17 Nothing I say in these instructions indicates that I
18 have any opinion about the facts. You, not I, have the duty
19 to determine the facts.

20 You must perform your duties as jurors without bias
21 or prejudice as to any party. The law does not permit you to
22 be controlled by sympathy, prejudice or public opinion. All
23 parties expect that you will carefully and impartially
24 consider all the evidence, follow the law as it is now being
25 given to you and reach a just verdict regardless of the

1 consequences.

2 Members of the jury, the judge and the jury have
3 separate and distinct functions. You, the jury, must
4 determine what the facts are in this case. You have listened
5 to all the evidence, and from that evidence, you will
6 determine what you consider the facts to be.

7 In deciding what really happened in this case, it is
8 your recollection of the evidence you must follow, not the
9 recollection of the attorneys, or even mine, or even me. If
10 any attorney has stated something to be a fact or if I state
11 something to be a fact at any time, and it is not the same as
12 your recollection of the evidence, then your recollection of
13 the evidence controls.

14 You must make your determination of the facts solely
15 on the basis of the evidence you have heard and seen and not
16 for any reasons outside the record of this case. You cannot
17 base your verdict on guess, suspicion, speculation, intuition
18 or conjecture. In short, you must determine where the real
19 truth lies as to the facts in this case. Once you have
20 determined what the facts are, then you must apply the law as
21 I give it to you now.

22 The function of the judge is to conduct the trial in
23 an orderly, fair and efficient manner and to rule upon
24 questions of law during the course of the trial. It is also
25 my function to instruct you as to the law which applies to

1 this case, as I am doing now.

2 It is your duty to accept the law as I state it. No
3 one can question the facts as you find them. Likewise, you
4 cannot question the law as I give it to you. You may not
5 disregard my instruction. You must not give special attention
6 to any one instruction or question the wisdom of any rule of
7 law. You should consider all the instructions as a whole.

8 During your deliberations, you must not communicate
9 with or provide any information to anyone by any means about
10 this case. You may not use any electronic device or media,
11 such as a telephone, cell phone, smartphone, iPhone, or a
12 computer; the internet, any internet service or any text or
13 instant messaging service or any internet chat room, blog or
14 website such as Facebook, LinkedIn, YouTube or Twitter, to
15 communicate to anyone any information about this case or to
16 conduct any research about this case until I accept your
17 verdict.

18 The evidence from which you are to find the facts
19 consist of the following: The testimony of the witnesses;
20 documents and other things received as exhibits; and any facts
21 that are stipulated; that is, formally agreed to by the
22 parties.

23 The following things are not evidence: Statements,
24 arguments and questions of the lawyers for the parties in this
25 case; objections by lawyers; any testimony I tell you to

1 disregard; and anything you may see or hear about this case
2 outside the courtroom.

3 You must make your decision based only on the
4 evidence that you see and hear in court. Do not let rumors,
5 suspicion or anything else that you may see or hear outside of
6 court influence your decisions in any way.

7 You should use your common sense in weighing the
8 evidence. Consider it in light of your everyday experience
9 with people and events, and give it whatever weight you
10 believe it deserves. If your experience tells you that
11 certain evidence reasonably leads to a conclusion, you are
12 free to reach that conclusion.

13 There are rules that control what can be received
14 into evidence. When a lawyer asks a question or offers an
15 exhibit into evidence and the lawyer on the other side thinks
16 that it is not permitted by the rules of evidence, that lawyer
17 may object. This simply means that the lawyer is requesting
18 that I make a decision on a particular rule of evidence.

19 You should not be influenced by the fact that an
20 objection is made. Objections to questions are not evidence.
21 Lawyers have an obligation to their clients to make objections
22 when they believe that evidence being offered is improper
23 under the rules of evidence.

24 You should not be influenced by the objection or by
25 the Court's rulings on it. If the objection is sustained,

1 ignore the question. If it is overruled, treat the answer
2 like any other. If you are instructed that some item of
3 evidence is received for a limited purpose, you must follow
4 that instruction.

5 Also, certain testimony or other evidence may be
6 ordered struck from the record, and you will be instructed to
7 disregard this evidence. Do not consider any testimony or any
8 evidence that gets struck or excluded. Do not speculate about
9 what a witness might have said or what an exhibit might have
10 shown.

11 During trial, I may have asked witnesses questions.
12 Please do not assume that I have any opinion about the subject
13 matter of my questions. Such questioning was done to clarify
14 matters, and no opinion should be drawn as to the judge's
15 views on any of the matters to which the questions related.
16 My questions were not meant to help one side of the case or
17 harm another side.

18 Please remember at all times that you, as jurors, are
19 the sole judges of the facts of this case.

20 As I mentioned earlier in this trial, there are two
21 types of evidence. One is direct evidence, such as the
22 testimony of an eyewitness and any exhibits introduced into
23 evidence. The other is circumstantial evidence.

24 Circumstantial evidence is evidence consisting of
25 facts and circumstances surrounding a transaction from which

1 you may infer other connected facts which reasonably follow
2 according to the common experiences of people.

3 You are not to -- you are to consider only the
4 evidence admitted in this case, but in your considerations,
5 you are not limited solely to what you see and hear as the
6 witnesses testify. You are permitted to draw from the facts
7 which you find to have been proven such reasonable inferences
8 as you feel justified in light of your experience. Inferences
9 are conclusions that reason and common sense lead you to reach
10 from facts established by the evidence in the case.

11 No party is required to produce all possible
12 witnesses who may have some knowledge about the facts of the
13 case or to produce all possible documents. It is the quality,
14 not the quantity, of the evidence that is important.

15 Inferences are deductions or conclusions that reason
16 and common sense lead you to draw from the facts established
17 by the evidence in the case. You may draw from the facts that
18 you find such reasonable inferences as seem justified in light
19 of your experience; however, you are to consider only the
20 evidence in the case and the reasonable inferences that you
21 draw therefrom.

22 Counsel have made a number of motions and objections
23 during the course of the trial. They have done that according
24 to the law, and it is their duty in fairly representing their
25 clients to make such motions and objections. The fact that I

1 have sustained or overruled objections in the course of the
2 trial is not to be taken by you as any indication that I have
3 an opinion as to what your findings should be. My rulings
4 must have no bearing directly or indirectly on your
5 deliberations or the outcome of this case. In ruling, I was
6 applying the rules of evidence in restricting the testimony to
7 only what the rules permit. You, the jury, must confine your
8 consideration to the evidence presented from the witnesses and
9 from any exhibits admitted in evidence.

10 The questions asked by a lawyer or either party to
11 this case are not evidence. If a lawyer asks a question of a
12 witness, which contains an assertion of fact, you may not
13 consider the assertion by the lawyer as evidence of that fact.
14 Only the witnesses' answers are evidence. If the witness
15 adopts the assertion of fact in the answer, then you may
16 consider the questions as part of the answer.

17 You may consider the question since it may put the
18 answer in context or in some way frame the answer, but, again,
19 please remember that only the witnesses's answers are
20 evidence.

21 If during the course of the trial, I sustained an
22 objection by counsel to a question asked by other counsel, you
23 are to disregard the question, and you must not speculate as
24 to what the answer would have been.

25 If after a question was asked and an answer given by

1 a witness, I rule that the answer should be stricken from the
2 record, you are to disregard both the question and the answer
3 in your deliberations.

4 In your consideration of this case, you must evaluate
5 the credibility of the witnesses. You are the sole judges of
6 the credibility of each witness called to testify in this
7 case. Only you can determine the importance or the weight
8 that the witness's testimony deserves. I have nothing to do
9 with that determination.

10 After you make your assessment concerning the
11 credibility of a witness, you may decide to believe all of
12 that witness's testimony, only a part of it, or none of it.

13 You may judge the credibility of the witnesses by the
14 manner in which they gave testimony, their demeanor upon the
15 stand, the reasonableness or unreasonableness of the
16 testimony, the source of their knowledge about what they
17 testified, their interest in the case, the bias the witnesses
18 may have for or against any of the parties or any
19 circumstances tending to shed light upon the truth or falsity
20 of the witness' testimony.

21 Consider each witness's ability to observe the
22 matters as to which he or she has testified. And consider
23 whether he or she impresses you as having an accurate memory
24 or recollection of these matters.

25 It is for you to say what weight you will give to the

1 testimony from any and all witnesses.

2 Inconsistencies or discrepancies in the testimony of
3 a witness or between the testimony of different witnesses may
4 or may not cause you to disbelieve or discredit such
5 testimony. Two or more persons witnessing an event may simply
6 see or hear it differently.

7 In weighing the effect of a discrepancy, always
8 consider whether it pertains to a matter of importance or to
9 an insignificant detail. And consider whether the discrepancy
10 results from innocent error or from intentional falsehood.

11 If you believe that any witness has intentionally
12 testified falsely as to any material fact of this case, you
13 are free to disbelieve the testimony of that witness in whole
14 or in part or believe it in part and disbelieve it in part,
15 taking into consideration all the facts and circumstances of
16 the case.

17 The testimony of a witness may be discredited by
18 showing that he or she previously made statements which are
19 different than or inconsistent with his or her testimony here
20 in court. Generally, the earlier inconsistent or
21 contradictory statements can be used to discredit or impeach
22 the credibility of the witness and not to establish the truth
23 of those earlier statements made elsewhere. However, if the
24 prior statement was given under oath, that earlier statement
25 may be considered for its truth.

1 It is for you to determine whether to believe all,
2 some or none of the testimony of a witness who has made prior
3 inconsistent or contradictory statements.

4 In considering a prior inconsistent statement, you
5 should consider whether it was simply an innocent error or an
6 intentional falsehood or whether it contains an important fact
7 or an unimportant detail.

8 If a person is shown to have knowingly testified
9 falsely concerning any important or material matter, you
10 obviously have a right to distrust the testimony of such
11 witness concerning other matters. You may reject all the
12 testimony of that witness or give it such weight or
13 credibility as you may think it deserves.

14 You are not required to accept testimony, even though
15 the testimony is uncontradicted and the witness is not
16 impeached. You may decide because of the witness's bearing
17 and demeanor or the inherent improbability of his or her
18 testimony or for some other reasons that such testimony is not
19 worthy of belief.

20 After you have made your own judgment or assessment
21 about the believability of a witness, you can then attach such
22 importance or weight to that testimony, if any, that you feel
23 it deserves.

24 In making up your minds in reaching a verdict, do not
25 make any decision simply because there are more witnesses on

1 one side than the other. Your job is to think about the
2 testimony of each witness you heard and decide how much you
3 believe of what he or she had to say and how much weight to
4 give to that testimony.

5 The weight of the evidence to prove a fact does not
6 necessarily depend on the number of witnesses who testify.
7 What is more important is how believable the witnesses were
8 and how much weight you think their testimony deserves.

9 This is a civil case. Plaintiff is the party who
10 brought this lawsuit. The defendant is the party against
11 which the lawsuit was filed. In civil cases, the plaintiff
12 has the burden of proving its case by what is called the
13 preponderance of the evidence. That means that plaintiff must
14 produce evidence which, considered in the light of all the
15 facts, leads you to believe what she claims is more likely
16 true than not.

17 To put it differently, if you were to put plaintiff's
18 and defendant's evidence on opposite sides of the scales,
19 plaintiff's evidence would have to make the scales tip
20 somewhat on her side. If plaintiff fails to meet this burden,
21 the verdict must be for the defendant.

22 If you find, after considering all the evidence, that
23 a claim or fact is more likely so than not so, then the claim
24 or fact has been proved by a preponderance of the evidence.

25 In determining whether any fact has been proved by a

1 preponderance to the evidence in this case, you may, unless
2 otherwise instructed, consider the testimony of all witnesses,
3 regardless of who may have called them, and all exhibits
4 received in evidence, regardless of who may have produced
5 them.

6 In this case, plaintiff Shannon Phillips has brought
7 three claims against defendant Starbucks Corporation.

8 The first claim is under a Federal Civil Rights
9 Statute that we refer to as Title VII. This statute prohibits
10 employers from discriminating against an employee in the terms
11 and conditions of employment because of the employee's race.

12 More specifically, plaintiff claims that she was
13 terminated by defendant because of her race.

14 Second, plaintiff has made a claim under a second
15 Federal Civil Rights statute that we refer to as Section 1981.
16 This statute also prohibits discrimination against an employee
17 because of that person's race.

18 Again, plaintiff claims that she was terminated by
19 defendant because of her race, in violation of this statute.

20 It is permissible for a plaintiff to allege a claim
21 under these two civil rights statutes that prohibit employers
22 from discriminating against an employee in the terms and
23 conditions of their employment because of the employee's race,
24 because these statutes have different elements under the law.

25 I will shortly describe to you the elements of these

1 two statutes.

2 Finally, in this case, plaintiff has made a claim
3 under a New Jersey state civil rights statute referred to as
4 the New Jersey Law Against Discrimination. It also prohibits
5 discrimination against an employee by an employer because of
6 an employee's race.

7 Again, I will instruct you on the law of each of
8 these three claims which more fully describe the issues you
9 must address in this case. With respect to these three
10 claims, defendant denies that plaintiff was discriminated
11 against in any way.

12 In this case, the first claim of race discrimination
13 is made under Title VII. There are two ways in which a
14 plaintiff may prove a Title VII violation. Plaintiff is
15 alleging that defendant terminated her because of her race.

16 First, in order for plaintiff to recover on this
17 discrimination claim against defendant, plaintiff must prove
18 that defendant intentionally discriminated against plaintiff.
19 This means that plaintiff must prove that her race was a
20 determinative factor in defendant's decision to terminate her.

21 To prevail on this claim, plaintiff must prove both
22 of the following by a preponderance of the evidence.

23 First: Defendant terminated plaintiff; and second:
24 Plaintiff's race was a determinative factor in defendant's
25 decision.

1 Although plaintiff must prove that defendant acted
2 with the intent to discriminate, plaintiff is not required to
3 prove that defendant acted with the particular intent to
4 violate plaintiff's federal civil rights. Moreover, plaintiff
5 is not required to produce direct evidence of intent such as
6 statements admitting discrimination. Intentional
7 discrimination may be inferred from the existence of other
8 facts.

9 You should weigh all the evidence received in this
10 case in deciding whether defendant intentionally discriminated
11 against plaintiff.

12 Defendant has given a nondiscriminatory reason for
13 its decision to terminate plaintiff. If you believe
14 defendant's stated reason, and if you find that the
15 termination would have occurred because of defendant's stated
16 reason, regardless of plaintiff's race, then you must find for
17 defendant.

18 If you disbelieve defendant's stated reason for its
19 conduct, then you may, but need not, find that plaintiff has
20 proved intentional discrimination.

21 In determining whether defendant's stated reason for
22 its actions was a pretext or excuse for discrimination, you
23 may not question defendant's business judgment.

24 You cannot find intentional discrimination simply
25 because you disagree with the business judgment of defendant

1 or believe it is harsh and unreasonable. You are not to
2 consider defendant's wisdom. However, you may consider
3 whether plaintiff has proven that defendant's reason is merely
4 a cover-up for discrimination.

5 Plaintiff does not have to prove that race was the
6 only reason for her termination, but ultimately you must
7 decide whether plaintiff has proven that her race was a
8 determinative factor in defendant's decision to terminate her.

9 Determinative factor means that if not for
10 plaintiff's race, the termination would not have occurred.

11 There is a second way in which a plaintiff can prove
12 race discrimination under Title VII.

13 In order for plaintiff to recover on this
14 discrimination claim against defendant, plaintiff must prove
15 that defendant intentionally discriminated against plaintiff.
16 This means that plaintiff must prove that her race was a
17 motivating factor in defendant's decision to terminate her.

18 To prevail on this claim, plaintiff must prove both
19 of the following by a preponderance of the evidence: First,
20 defendant terminated plaintiff; and second, plaintiff's race
21 was a motivating factor in defendant's decision. Again,
22 second, plaintiff's race was a motivating factor in
23 defendant's decision.

24 Although plaintiff must prove that defendant acted
25 with the intent to discriminate, plaintiff is not required to

1 prove that defendant acted with the particular intent to
2 violate plaintiff's federal civil rights. In showing that
3 plaintiff's race was a motivating factor for defendant's
4 action, plaintiff is not required to prove that her race was
5 the sole motivation or even the primary motivation for
6 defendant's decision. Plaintiff need only prove that
7 plaintiff's race played a motivating part in defendant's
8 decision, even though other factors may have also motivated
9 defendant.

10 As used in this instruction, plaintiff's race was a
11 motivating factor if her race played a part in defendant's
12 decision to terminate her.

13 Section 1981 is the second statute plaintiff claims
14 defendant violated by discriminating against her in her
15 employment based on race.

16 In order for plaintiff to recover on this
17 discrimination claim against defendant, plaintiff must prove
18 that defendant intentionally discriminated against plaintiff.
19 This means that plaintiff must prove that her race was a
20 determinative factor in defendant's decision to terminate her.

21 To prevail on this claim, plaintiff must prove both
22 of the following by a preponderance of the evidence: First,
23 defendant terminated plaintiff; and second, plaintiff's race
24 was a determinative factor in defendant's decision.

25 Although plaintiff must prove that defendant acted

1 with the intent to discriminate, plaintiff is not required to
2 prove that defendant acted with the particular intent to
3 violate plaintiff's federal civil rights.

4 Moreover, plaintiff is not required to produce direct
5 evidence of intent, such as statements admitting the
6 discrimination. Intentional discrimination may be inferred
7 from the existence of other facts.

8 You should weigh all of the evidence received in the
9 case in deciding whether defendant intentionally discriminated
10 against plaintiff.

11 Defendant has given a nondiscriminatory reason for
12 its decision to terminate plaintiff. If you believe
13 defendant's stated reason and if you find that the termination
14 would have occurred because of defendant's stated reason
15 regardless of the plaintiff's race, then you must find for
16 defendants.

17 If you disbelieve defendant's stated reason for its
18 conduct, then you may, but need not, find that plaintiff has
19 proved intentional discrimination.

20 In determining whether defendant's stated reason for
21 its action was pretext or excuse for discrimination, you may
22 not question defendant's business judgment. You cannot find
23 intentional discrimination simply because you disagree with
24 the business judgment of defendant or believe it is harsh or
25 unreasonable.

1 You are not to consider defendant's wisdom. However,
2 you may consider whether plaintiff has proven that defendant's
3 reason is merely a cover-up for discrimination.

4 Plaintiff does not have to prove that race was the
5 only reason for her termination, but ultimately you must
6 decide whether plaintiff has proven that her race was a
7 determinative factor in defendant's decision to terminate
8 plaintiff. Again, determinative factor means that if not for
9 a plaintiff's race, the termination would not have occurred.

10 I am now going to instruct you on damages.

11 These instructions apply to the Title VII claim and
12 the Section 1981 claim. And just because I am instructing you
13 on how to -- on the damages does not mean that I have any
14 opinion on whether or not defendant should be held liable.

15 If you find by a preponderance of the evidence that
16 defendant intentionally discriminated against plaintiff by
17 terminating her, then you must consider the issue of
18 compensatory damages. You must award plaintiff an amount that
19 will fairly compensate her for any injury she actually
20 sustained as a result of defendant's conduct. The damages
21 that you award must be fair compensation, no more and no less.
22 The award of compensatory damages is meant to put plaintiff in
23 the position she would have occupied if the discrimination had
24 not occurred. Plaintiff has the burden of proving damages by
25 a preponderance of the evidence.

1 Plaintiff must show that the injury would not have
2 occurred without defendant's act. Plaintiff must also show
3 that defendant's act played a substantial part in bringing
4 about the injury and that the injury was either a direct
5 result or a reasonably probable consequence of defendant's
6 act.

7 This test, a substantial part in bringing about the
8 injury, is to be distinguished from the test you must apply in
9 determining whether defendant's actions were motivated by
10 discrimination. In other words, even assuming that
11 defendant's actions were motivated by discrimination,
12 plaintiff is not entitled to damages for an injury unless
13 defendant's discriminatory actions actually played a
14 substantial part in bringing about that injury.

15 In determining the amount of any damages that you
16 decide to award, you should be guided by your common sense.
17 You must use sound judgment in affixing an award of damages,
18 drawing reasonable inferences from the facts in the case. You
19 may not award damages based on sympathy, speculation or
20 guesswork.

21 You may award damages for any pain, suffering,
22 inconvenience, mental anguish or loss of enjoyment of life
23 that plaintiff experienced as a consequence of defendant's
24 allegedly unlawful act. No evidence of a monetary value of
25 such intangible things as pain and suffering has been or need

1 be introduced into evidence. There is no exact standard for
2 affixing the compensation to be awarded for these elements of
3 damages. Any award you make should be fair in light of the
4 evidence presented at the trial.

5 I instruct you that in awarding compensatory damages
6 you are not to award damages for the amount of wages that
7 plaintiff would have earned, either in the past or in the
8 future, if she had continued in employment with defendant.
9 These elements of recovery of wages that plaintiff would have
10 received from defendant are called back pay or front pay, and
11 under the applicable law, the determination of back pay or
12 front pay is for the Court to decide.

13 You may award damages for monetary losses that
14 plaintiff may suffer in the future as a result of the
15 allegedly unlawful act. For example, you may award damages
16 for loss of earnings resulting from any harm to plaintiff's
17 reputation that was suffered as a result of defendant's
18 allegedly unlawful act. Where a victim of discrimination has
19 been terminated by an employer and has sued that employer for
20 discrimination, she may find it more difficult to be employed
21 in the future or may have to take a job that pays less than if
22 the discrimination had not occurred. The element of
23 damages -- that element of damages is distinct from the amount
24 of wages plaintiff would have earned in the future from
25 defendant if she had retained the job.

1 As I instructed you previously, plaintiff has the
2 burden of proving damages by a preponderance of the evidence,
3 but the law does not require that plaintiff prove the amount
4 of her losses with mathematical precision. It requires only
5 as much definiteness and accuracy as circumstances permit.

6 You are instructed that plaintiff has a duty under
7 the law to mitigate her damages. That means that plaintiff
8 must take advantage of any reasonable opportunity that may
9 have existed under the circumstances to reduce or minimize the
10 loss or damage caused by defendant. It is defendant's burden
11 to prove that plaintiff has failed to mitigate, so if
12 defendant persuades you by a preponderance of the evidence
13 that plaintiff has failed to take advantage of an opportunity
14 that was reasonably available to her, then you must reduce the
15 amount of plaintiff's damages by the amount that could have
16 been reasonably obtained if she had taken advantage of such an
17 opportunity.

18 In assessing damages, you must not consider
19 attorneys' fees or costs of litigating this case. Attorneys'
20 fees and costs, if relevant at all, are for the Court and not
21 the jury to determine; therefore, attorneys' fees and costs
22 should play no part in your calculation of any damages.

23 You will also consider the issue of punitive damages
24 as they apply under Title VII -- as they apply to Title VII
25 and Section 1981 claims.

1 Plaintiff claims the acts of defendant were done with
2 reckless indifference to plaintiff's federally protected
3 rights and that as a result, there should be an award of what
4 are called punitive damages. A jury may award punitive
5 damages to punish a defendant or to deter defendant and others
6 like defendant from committing such conduct in the future.
7 Where appropriate, the jury may award punitive damages even if
8 plaintiff suffered no actual injury and so receives nominal
9 rather than compensatory damages.

10 However, punitive damages cannot be imposed on an
11 employer where its employees acted contrary to the employer's
12 own good faith efforts to comply with the law by implementing
13 policies and procedures designed to prevent unlawful
14 discrimination in the workplace. An award of punitive damages
15 against defendant is therefore permissible in the case only if
16 you find by a preponderance of the evidence that a management
17 official of defendant personally acted with reckless
18 indifference to plaintiff's federally protected rights. An
19 action is with reckless indifference if taken with knowledge
20 that it may violate the law.

21 But even if you make a finding that there has been an
22 act of discrimination with reckless disregard of plaintiff's
23 rights, you cannot award punitive damages if defendant proved
24 by a preponderance of the evidence that it made a good faith
25 attempt to comply with the law by adopting policies and

1 procedures designed to prevent unlawful discrimination such as
2 that occurred by plaintiff.

3 An award of punitive damages is discretionary; that
4 is, if you find that the legal requirements of punitive
5 damages are satisfied and that defendant has not proved that
6 it made a good faith attempt to comply with the law, then you
7 may decide to award punitive damages, or you may decide not to
8 award them. I will now discuss some considerations that
9 should guide your exercise of this discretion.

10 If you have found the elements permitting punitive
11 damages as discussed in this instruction, then you are to
12 consider the purposes of punitive damages. The purposes of
13 punitive damages are to punish a defendant for reckless
14 disregard of federal rights, would it deter a defendant and
15 others like defendant from doing similar things in the future
16 or both. Thus, you may consider whether to award punitive
17 damages to punish defendant. You should also consider whether
18 actual damages standing alone are sufficient to deter or
19 prevent defendant from, again, performing any wrongful acts it
20 may have performed. Finally, you should consider whether an
21 award of punitive damages in this case is likely to deter
22 others from performing wrongful acts similar to those
23 defendant may have committed.

24 If you decide to award punitive damages, then you
25 should also consider the purposes of punitive damages in

1 deciding the amount of punitive damages to award; that is, in
2 deciding the amount of punitive damages, you should consider
3 the degree to which defendant should be punished for its
4 wrongful conduct and the degree to which an award of one sum
5 or another will deter defendant or others from committing
6 similar wrongful acts in the future.

7 The extent to which a particular amount of money will
8 adequately punish a defendant and the extent to which a
9 particular amount will adequately deter or prevent future
10 misconduct may depend upon defendant's financial resources.
11 Therefore, if you find that punitive damages should be awarded
12 against defendant, you may consider the financial resources of
13 defendant in affixing the amount of those damages.

14 I will now instruct you on the elements of a
15 discrimination claim under the New Jersey Law Against
16 Discrimination.

17 Plaintiff claims that defendant unlawfully
18 discriminated against her by terminating plaintiff's
19 employment because of plaintiff's race. Defendant denies
20 these allegations and instead maintains that it terminated
21 plaintiff because of her performance. If defendant did, in
22 fact, terminate plaintiff because of her race, that would be
23 unlawful under the New Jersey Law Against Discrimination.

24 It is plaintiff's burden to prove that it is more
25 likely than not that defendant engaged in intentional

1 discrimination because of plaintiff's race. That is the
2 ultimate issue you must decide: Did defendant terminate
3 plaintiff because plaintiff's -- because of her race?
4 Plaintiff may do this directly, by proving that a
5 discriminatory reason -- by proving a discriminatory reason
6 more likely than not motivated defendant's action, or
7 indirectly, by proving that defendant's stated reason for its
8 action is not the real reason for its action.

9 You may find that defendant had more than one reason
10 or motivation for its actions. For example, you may find that
11 defendant was motivated both by plaintiff's race and by other
12 nondiscriminatory factors such as plaintiff's job performance.
13 To prevail, plaintiff is not required to prove that
14 plaintiff's race was the only reason or motivation for
15 defendant's actions; rather, plaintiff must prove -- only
16 prove that plaintiff's race played a role in their decision
17 and that it made an actual difference in defendant's decision.

18 If you find that plaintiff's race did make an actual
19 difference in defendant's decision, then you must enter
20 judgment for plaintiff. If, however, you find that defendant
21 would have made the same decision regardless of plaintiff's
22 race, then you may enter a judgment for defendant.

23 Because direct proof of intentional discrimination is
24 often not available, plaintiff is allowed to prove
25 discrimination by circumstantial evidence. In this regard,

1 you are to evaluate all of the indirect evidence of
2 discrimination that you find was presented during the trial.
3 In particular, you should consider whether the explanation
4 given by defendant for plaintiff's actions was the real reason
5 for its actions.

6 If you do not believe the reason given by defendant
7 is the real reason defendant terminated plaintiff, you may,
8 but are not required, to find that plaintiff has proven her
9 case of discrimination. You are permitted to do so because if
10 you find defendant has not told the truth about why it acted,
11 you may conclude that it is hiding the discrimination;
12 however, while you are permitted to find discrimination based
13 upon your disbelief of defendant's stated reasons, you are not
14 required to do so. This is because you may conclude that
15 defendant's stated reason is not the real reason but that the
16 real reason is something other than illegal discrimination.

17 Let me give you an example of what I am talking
18 about. Assume that an employee claims plaintiff was
19 discharged because of plaintiff's age, and the employer's
20 claim, plaintiff was discharged because of excessive
21 absenteeism. If you were to conclude that the employer's
22 explanation is false and that it did not really discharge the
23 employee because of excessive absenteeism, you would be
24 permitted to find that the real reason was because of the
25 employee's age. However, you would not be required to find

1 that the real reason was because of the employee's age,
2 because you might find that the real reason had nothing to do
3 with the -- with illegal discrimination. For example, you
4 might find that the real reason was because the employer
5 simply did not like the employee.

6 Plaintiff at all times bears the ultimate burden of
7 convincing you that it is more likely than not that defendant
8 engaged in the intentional discrimination. To decide whether
9 plaintiff has proven intentional discrimination, you should
10 consider all of the evidence presented by the parties using
11 the guidelines I gave you in the beginning of my instructions
12 regarding evaluating evidence generally, such as weighing the
13 credibility of witnesses. Keep in mind that in reaching your
14 determination of whether defendant engaged in intentional
15 discrimination, you are instructed that defendant's actions
16 and business practices need not be fair, wise, reasonable,
17 moral or even right, so long as plaintiff's race was a
18 motivating factor for the termination.

19 I remind you that the ultimate issue you must decide
20 is whether defendant engaged in illegal race discrimination by
21 terminating plaintiff, and then plaintiff has the burden to
22 prove that the discrimination occurred.

23 I'm now going to instruct you on how compensatory
24 damages are considered -- are to be considered by you as they
25 apply to the New Jersey Law Against Discrimination.

1 If you find for the plaintiff, she is entitled to
2 recover fair and reasonable money damages for the full extent
3 of harm caused, no more and no less.

4 A plaintiff who is awarded a verdict is entitled to
5 fair and reasonable compensation for any emotional distress
6 she has suffered that was the proximate result of defendant's
7 unlawful conduct.

8 Plaintiff is not seeking damages for emotional
9 distress continuing into the future; rather, she is only
10 seeking damages for the emotional distress she has suffered
11 from the date of defendant's unlawful conduct through the date
12 of your verdict. Emotional distress includes embarrassment,
13 humiliation, indignity and other mental anguish.

14 The measure of damages is what a reasonable person
15 would consider to be adequate and just under all the
16 circumstances of the case to compensate plaintiff for her
17 emotional distress.

18 You should consider the nature, character and
19 seriousness of any emotional distress. You must also consider
20 the duration of the emotional distress as any award you make
21 must cover the damages suffered by plaintiff to the present
22 time.

23 Plaintiff has the burden of proving her damages
24 through credible, competent evidence, although she does not
25 have to offer any witnesses to corroborate her emotional

1 distress. Distress need not be permanent. Physical or
2 psychological symptoms are not be necessary, and plaintiff
3 need not have obtained any type of professional treatment.
4 Plaintiff's testimony standing alone is enough to support an
5 award of emotional distress damages. On the other hand, you
6 are free to disbelieve all or part of plaintiff's testimony,
7 and if you do, you should act accordingly by either reducing
8 the amount of damages you award for emotional distress or by
9 not awarding any emotional distress damages at all.

10 The law does not provide you with any table, schedule
11 or formula by which a person's emotional distress may be
12 measured in terms of money. The amount is left to your sound
13 discretion. You are to use your discretion to attempt to make
14 plaintiff whole so far as money can do so, based upon reason
15 and sound judgment, without any passion, prejudice, bias or
16 sympathy. You each know from your common experience the
17 nature of emotional distress, and you also know the nature and
18 function of money. The task of equating the two so as to
19 arrive at a fair and reasonable award of damages requires a
20 high order of human judgment. For this reason, the law can
21 provide no better yardstick for your guidance than your own
22 impartial judgment and experience.

23 You are to exercise sound judgment as to what is
24 fair, just and reasonable under all the circumstances. You
25 should consider all of the evidence presented by the parties

1 on the subject of plaintiff's emotional distress.

2 After considering the evidence, you should award a
3 lump sum of money that will fairly and reasonably compensate
4 plaintiff for any emotional distress you find she has proven.

5 You will also consider the issue of punitive damages
6 as they apply to New Jersey Law Against Discrimination.

7 Specifically, you must first decide whether to award
8 punitive damages against defendant, and if you decide to do
9 so, what amount should be awarded.

10 The intent of punitive damages. You may award
11 punitive damages to plaintiff only if you find that she has
12 proved certain additional matters.

13 The purposes of punitive damages are different from
14 the purposes of compensatory damages.

15 Compensatory damages are intended to compensate
16 plaintiff for its actual injury or loss. I'm sorry, wait.
17 Let me just restate that.

18 Compensatory damages are intended to compensate
19 plaintiff for the actual injury or loss she suffered as a
20 result of defendant's discriminatory conduct. In contrast,
21 punitive damages are intended to punish a wrongdoer and to
22 deter the wrongdoer from similar wrongful conduct in the
23 future.

24 Punitive damages are designed to require the
25 wrongdoer to pay an amount of money that is sufficient to

1 punish the defendant for a particular conduct and to deter
2 that party from future discriminatory conduct.

3 Punitive damages are not to be awarded as a routine
4 matter in every case. They are to be awarded only in
5 exceptional cases, to punish a party who has acted in an
6 especially egregious or outrageous manner and to discourage
7 the party from engaging in similar discriminatory conduct in
8 the future. Therefore, plaintiff is not entitled to punitive
9 damages simply because you have found that defendant acted --
10 I'm sorry, that defendant engaged in a specific conduct or
11 because you have awarded damages to compensate plaintiff for
12 her injury.

13 You may award punitive damages to plaintiff only if
14 you find that she has proved certain additional matters.

15 To support an award of punitive damages here, you
16 must find that plaintiff has proved by clear and convincing
17 evidence that the injury, loss or harm suffered by her was the
18 result of defendant's acts or omissions and that defendant
19 acted in wanton and willful disregard of plaintiff's rights.

20 Willful or wanton conduct is a deliberate act or
21 omission with knowledge of a high degree of probability of
22 harm to another who foreseeably might be harmed by that act or
23 omission in reckless -- and reckless indifference to the
24 consequences of the act or omission.

25 Now, the standard of "clear and convincing

1 evidence" -- and again, this is under the New Jersey statute.
2 It's a clear and convincing evidence standard for punitive
3 damages.

4 The standard of clear and convincing evidence which I
5 mentioned above means evidence which leaves no serious or
6 substantial doubt about the correctness of the conclusions
7 drawn from the evidence. This is different and less than
8 proof beyond a reasonable doubt. This is also different and
9 more than the preponderance of evidence to support an award of
10 punitive damages.

11 In determining whether to award punitive damages,
12 consider all relevant evidence, including but not limited to
13 the following: The likelihood, at a relevant time, that
14 serious harm would arise from defendant's conduct; two,
15 defendant's awareness or reckless disregard of the likelihood
16 that such serious harm would arise from its conduct; three,
17 the conduct of defendant upon learning that its initial
18 conduct would likely cause more harm; and, four, the duration
19 of the conduct or any concealment of that conduct by
20 defendant.

21 You must first decide whether an award of punitive
22 damages is justified against defendant in this case. To award
23 punitive damages against it, you must find that both of the
24 following factors are present:

25 First, you must find that discrimination was

1 especially egregious. If you do not find that
2 discrimination was especially egregious, then you must not
3 award punitive damages.

4 In a moment, I will define especially egregious
5 behavior.

6 Second, if you do find that the discrimination was
7 especially egregious, you must then also find that at least
8 one of defendant's upper management employees actually
9 participated in or was willfully indifferent to the wrongful
10 conduct.

11 You cannot award punitive damages against defendant
12 unless there was some involvement by a member of its upper
13 management.

14 Especially egregious conduct is conduct that was done
15 with a willful and wanton disregard of the rights of
16 plaintiff.

17 Willful and wanton disregard of the rights of the
18 plaintiff means that an upper management employee deliberately
19 acted with knowledge of a high degree of probability of harm
20 to plaintiff and reckless indifference to the consequences of
21 that act.

22 In making your determination as to whether the
23 discriminatory conduct of an upper management employee was
24 especially egregious or outrageous, you must consider all the
25 evidence surrounding the wrongful conduct, including the

1 likely -- one, the likelihood that serious harm would arise
2 from the discrimination; two, an upper management employee's
3 awareness or reckless disregard of the likelihood that serious
4 harm would arise; three, an upper management employee's
5 conduct after learning that their initial conduct would likely
6 cause harm; and four, the duration of the wrongful conduct and
7 any concealment of that conduct by an upper management
8 employee.

9 You may not award punitive damages based solely on a
10 finding of negligence or even gross negligence by an upper
11 management employee. You may not award punitive damages
12 solely because you have determined that discrimination
13 occurred. Rather, as I have said, punitive damages are to be
14 awarded only in those exceptional cases where the
15 discrimination was especially egregious or outrageous.

16 The second factor that you must consider that you
17 must find -- again, the second factor that you must find is
18 that at least one of defendant's upper management employees
19 was involved with the discrimination.

20 In a moment I will define the kind of involvement
21 that you must find occurred. As an initial matter, though,
22 you must decide whether certain of defendant's employees were
23 part of its upper management.

24 To decide whether employees of defendant were part of
25 its upper management, you must consider this: The purpose of

1 defining upper management is to give employers the incentive
2 to provide voluntary compliance programs and to insist on the
3 effective enforcement of its programs. The employees who
4 acted wrongfully must have had sufficient authority to make
5 the imposition of punitive damages fair and reasonable.

6 Clearly, upper management includes a corporation's
7 board of directors and its highest level executive officers.
8 Upper management will also include those employees responsible
9 to formulate the corporation's antidiscrimination policies,
10 provide compliance programs and insist on performance of such
11 programs and those employees to whom a corporation has
12 delegated responsibility to execute its policies in the
13 workplace, set the atmosphere or control the day-to-day
14 operations of the unit. This group may include heads of
15 departments, regional managers or compliance officers.

16 Not all managerial employees, however, constitute
17 upper level management. To decide which employees below the
18 highest levels of management are included in upper management,
19 you must analyze, weigh and consider all of the surrounding
20 facts and circumstances.

21 For an employee on the second tier of management to
22 be considered a member of upper management, the employee
23 should have either, one broad supervisory powers over the
24 involved employees, including the power to hire, fire, promote
25 and discipline; or, two, the delegated responsibility to

1 execute the employer's policies to ensure a safe, productive
2 and discrimination-free workplace.

3 If you decide that some of the employees identified
4 as -- by plaintiff as acting wrongfully were part of upper
5 management of defendant, you cannot -- you cannot award -- let
6 me just restate that.

7 If you decide that none of the employees identified
8 by plaintiff as acting wrongfully were part of upper
9 management of defendant, you cannot award punitive damages.

10 If you decide that the employees identified by
11 plaintiff are part of the upper management of defendant, you
12 must then consider whether any of those upper management
13 employees actually participated in or were willfully
14 indifferent to the discrimination that occurred.

15 To find that upper management actually participated
16 in wrongful conduct, you must find that upper management
17 employees not only knew about the wrongful conduct but also
18 engaged in affirmative acts that accomplished that wrongful
19 conduct.

20 To find willful indifference to wrongful conduct on
21 the part of upper management, you must find that upper
22 management employees knew about the wrongful conduct but chose
23 to disregard or ignore it rather than to stop it.

24 In other words, you cannot award punitive damages
25 against defendant simply because upper management employees

1 may have been negligent in failing to learn of or reasonably
2 respond to the discrimination. You must instead find that
3 upper management employee or employees actually knew about
4 those allegations and consciously chose to ignore them.

5 In summary, to award punitive damages against
6 defendants, you must find by clear and convincing evidence
7 both that an upper management employee engaged in especially
8 egregious conduct and that an upper management employee of
9 defendant either actively participated in the wrongful conduct
10 or was willfully indifferent to it.

11 If you find that plaintiff has proved that defendant
12 has engaged in the type of wrongdoing that justifies awarding
13 punitive damages, you must then decide the amount of punitive
14 damages to award. That amount must be based on your sound
15 judgment as to what is fair and reasonable under all the
16 circumstances. As I stated earlier, punitive damages are not
17 to be awarded to compensate plaintiff for injuries but to
18 punish defendant and to deter defendant from similar wrongful
19 conduct in the future.

20 There is no schedule or formula to calculate the
21 amount of punitive damages. The amount of your award of
22 punitive damages must bear some reasonable relationship to the
23 actual injury inflicted and the cause of the injury. You must
24 use your sound discretion in deciding this issue.

25 In exercising your discretion, you must consider all

1 relevant evidence surrounding the wrongful conduct, including:
2 One, the likelihood at the relevant time that serious harm
3 would arise from the conduct; two, defendant's awareness or
4 reckless disregard of the likelihood that such serious harm
5 would arise from the conduct; three, the conduct of defendant
6 upon learning that its initial conduct would likely cause
7 harm; four, the duration of the conduct or any concealment of
8 it by defendant; five, the profitability, if any, of the
9 discriminatory or harassing conduct to defendant; six, when
10 the discriminatory conduct was terminated; and, seven,
11 defendant's financial condition and ability to pay the
12 punitive damage award.

13 In addition, you may also consider: The nature of
14 the wrongful conduct; the extent of harm inflicted; the intent
15 of defendant; whether defendant had adequate policies,
16 procedures, training or monitoring measures designed to
17 prevent discrimination; and whether defendant took sufficient
18 steps after learning of the wrongful conduct to investigate
19 and address the wrongful conduct; and any other mitigating or
20 aggravating circumstances that you believe should reduce or
21 increase the amount of the damages award.

22 After considering all of these factors, you must
23 decide whether punitive damages should be awarded in this
24 case, and if you decide to award punitive damages, what the
25 proper amount should be.

1 Lastly, I will instruct you on nominal damages. If
2 you return a verdict for plaintiff but plaintiff has failed to
3 prove actual injury and therefore is not entitled to
4 compensatory damages, then you must award nominal damages of
5 \$1.

6 A person whose federal rights were violated is
7 entitled to recognition of that violation even if she suffered
8 no actual injury. Nominal damages of \$1 are designed to
9 acknowledge the deprivation of a federal right even where no
10 actual injury occurred.

11 However if you find an actual injury, you must award
12 compensatory damages, as I have instructed you, rather than
13 nominal damages.

14 When you retire to consider your verdict, your
15 verdict must be unanimous; that is, all jurors must agree.

16 In reaching your verdict, you must determine the
17 facts from all of the testimony you've heard and from the
18 other evidence received during the trial. You are the sole
19 and exclusive judge of the facts. Neither I nor anyone else
20 may infringe upon your responsibility in that area. You must,
21 however, accept the rules of law as I have given them to you,
22 whether you agree with them or not, and apply the law as I
23 have stated it to the facts that you find.

24 Upon retiring to the jury room, you will select one
25 of your number to act as your foreperson. The foreperson will

1 preside over your deliberations and will be your spokesperson
2 here in court.

3 A verdict form has been prepared for you, and I will
4 send out with the jury nine copies of the verdict form: one
5 for each of you, and the ninth one will be the -- should be
6 signed and dated by the foreperson, and that will be the
7 official verdict form in the case.

8 Again, the verdict form has been put together for
9 you. There are different things you have to consider that are
10 set forth on the verdict form as instructed -- as set forth in
11 my jury instruction, but this is in effect the roadmap that
12 you follow. It's on the verdict form. For your convenience,
13 again, you will each have a copy of the verdict sheet. You
14 will take the verdict form to the jury room, and when you have
15 reached unanimous agreement as to your verdict, you will have
16 your foreperson sign and complete each -- the form and then
17 return with your verdict to the courtroom.

18 None of you should attempt to communicate with me by
19 any other means than a note -- a note signed by the
20 foreperson. I will not communicate with you on any subject
21 touching the merits of the case other than in writing or
22 orally here in open court. Any writing from me to you or you
23 to me will be shared with counsel. At no time during your
24 deliberations should you reveal even to me how you may stand
25 numerically on any question before you.

1 I have been charging you on the law that you must
2 apply after you have considered what the facts are in this
3 case. Nothing I have said in my charge should be taken by you
4 to indicate in any way what I believe the verdict should be.
5 I have been telling you what the law of the case is. It is
6 for you, the jury, to return your own verdict following the
7 law as I have given it to you.

8 You have been chosen and sworn as jurors in this case
9 to try the issues of fact. When you retire to the jury room,
10 your functions will be to weigh the evidence in the case and
11 reach a verdict solely on the basis of the evidence. Each
12 juror is entitled to his or her own opinion. Each should,
13 however, exchange views with his or her fellow jurors. That
14 is the very purpose of jury deliberation: to discuss and to
15 consider the evidence, to listen to the arguments of fellow
16 jurors, to present your individual views, to consult with one
17 another, and to reach an agreement based solely and wholly on
18 the evidence if you can do so without violence to your own
19 judgment.

20 Each of you must decide the case for yourself, after
21 consideration with your fellow jurors, on the evidence of the
22 case. But you should not hesitate to change an opinion you
23 made which, after discussion with your fellow jurors, appears
24 erroneous. But, if after carefully considering all the
25 evidence and arguments of your fellow jurors, you entertain

1 the conscientious view that differs from others, you are not
2 to yield your convictions simply because you're outnumbered.
3 Your final vote must reflect your conscientious conviction as
4 to how the issues should be decided.

5 Again, your verdict must be unanimous. And it is
6 necessary that each juror agree with the verdict.

7 Members of the jury, that concludes my instructions
8 on the law.

9 I just want to have one conference with counsel at
10 sidebar, and after I do so, you can go back to the jury room
11 with your -- to begin your deliberations.

12 I will send out one copy of my jury instructions for
13 you to have during your deliberations. So you will have that
14 and obviously the nine copies of the verdict form.

15 So let me just see counsel at sidebar.

16 (At sidebar.)

17 THE COURT: Are there any objections, additions,
18 deletions, changes to the jury charge?

19 MR. HARRIS: Nothing from the defendant.

20 MS. MATTIACCI: Nothing from the plaintiff, Your
21 Honor.

22 THE COURT: Nothing from either side. Okay.

23 (End of sidebar.)

24 THE COURT: All right. With that, members of the
25 jury, I'll ask you to go to the jury room now and begin your

1 deliberations.

2 And we'll send out the exhibit book also?

3 MS. MATTIACCI: We do have a book, Your Honor.

4 THE COURT: Yes. Okay.

5 All right. We'll stand in recess.

6 (Jury out.)

7 THE COURT: Counsel, just leave your phone numbers or
8 wherever you're going to be with Mr. Higgins, but I suggest,
9 based on my experience, sometimes juries have a quick question
10 or two, so you might want to just be around the courtroom.

11 MS. MATTIACCI: Okay.

12 THE COURT: All right. But I'm not requiring you to
13 stay here as long as you can get back to court in a reasonable
14 period of time. All right?

15 MS. MATTIACCI: I just had one question, Your Honor.

16 In terms of the economic loss, back pay and front
17 pay, in the event the jury does come back with liability, do
18 you want us to be prepared to put on evidence today or
19 tomorrow, or is that something that Your Honor would handle at
20 a later time?

21 THE COURT: It's something I'll handle in the future.
22 If front pay and back pay becomes an issue in the case, I
23 would like the parties to confer first and see whether or not
24 there's any agreement on it. I don't know.

25 MS. MATTIACCI: Okay.

1 THE COURT: If not, then we'll have a hearing. All
2 right?

3 MS. MATTIACCI: Thank you, Your Honor.

4 THE COURT: But we're not going to do that after the
5 verdict.

6 MS. MATTIACCI: Okay. Thank you.

7 THE COURT: All right. We'll stand in recess.

8 (Recess at 10:43 a.m. until 11:12 a.m.)

9 THE COURT: On the record.

10 We have a question from the jury. It's signed by the
11 foreperson, who is John Iadanza, Juror Number 6, I believe --
12 I mean, 8, Juror Number 8, John Iadanza.

13 We found an error on the verdict form, Section II,
14 question 3, "Do you find the defendant," in quotes. We
15 believe this should state plaintiff.

16 And they're obviously correct, so what I would
17 propose is I just bring the jury back in, and I tell them that
18 they are correct, and that the foreperson just put a line
19 through the word "defendant" and write the word "plaintiff"
20 above it and initial -- put initials next to it.

21 Would that be satisfactory or --

22 MR. HARRIS: It is, Your Honor.

23 MS. MATTIACCI: Yes, that's fine, Your Honor.

24 THE COURT: All right. Let's bring in the jury,
25 Mr. Higgins.

1 Where's Mr. Higgins?

2 (Jury in.)

3 THE COURT: Please be seated.

4 Members of the jury, I have a note that was sent to
5 me, and I've shared with counsel, signed by Mr. John Iadanza,
6 Juror Number 8, who is the foreperson.

7 We found an error on the verdict form, Section II,
8 question 3, "Do you find that defendant" -- that's in quotes.
9 We believe this should say plaintiff.

10 And you are absolutely correct. We thank you for
11 picking that up.

12 And I've conferred with counsel, and we propose as a
13 solution that the foreperson, Mr. Iadanza, just neatly put a
14 line through "plaintiff" -- through "defendant" and write
15 "plaintiff" right above it, and put your initials next to the
16 word "plaintiff." Okay?

17 And you can make that change just on the official
18 verdict form, the one verdict form with your verdict.

19 So with that, I'll ask you to go back and continue
20 your deliberations.

21 (Jury out.)

22 THE COURT: And the question will be made part of the
23 record.

24 MS. MATTIACCI: Thank you, Your Honor.

25 THE COURT: We'll stand in recess.

1 (Recess at 11:16 a.m. until 3:22 p.m.)

2 THE COURT: Counsel, we have a note from the jury.

3 We have reached a verdict.

4 Let's bring the jury in.

5 (Jury in.)

6 THE COURT: Please be seated.

7 Members of the jury, I have a note from you that I've
8 shared with counsel.

9 The note reads: We have reached a verdict.

10 Would the foreperson please stand.

11 THE FOREPERSON: I am, sir.

12 THE COURT: This is John Iadanza.

13 Has the jury reached a verdict?

14 THE FOREPERSON: Yes, it has.

15 THE COURT: Is the verdict unanimous?

16 THE FOREPERSON: Yes.

17 THE COURT: All right. May I see the slip?

18 All right. I'll return the verdict slip to the
19 courtroom deputy, and I'll ask the courtroom deputy to take
20 the verdict.

21 THE DEPUTY CLERK: In the United States District
22 Court for the District of New Jersey, in the matter of Shannon
23 Phillips, Plaintiff, v. Starbucks Corporation, Defendant,
24 Civil Action Number 19-19432, Jury Verdict Form.

25 I. Race Discrimination (federal claim):

1 Question 1. Do you find that plaintiff has proven by
2 a preponderance of the evidence under Title VII that her race
3 was a determinative factor in defendant's decision to
4 terminate her?

5 THE FOREPERSON: Yes.

6 THE DEPUTY CLERK: If you answered "Yes" to
7 Question 1, please skip to Question 3.

8 II. Race Discrimination (federal claim):

9 Question 3. Do you find that plaintiff has proven by
10 a preponderance of the evidence under Section 1981 that her
11 race was a determinative factor in defendant's decision to
12 terminate her?

13 THE FOREPERSON: Yes.

14 THE DEPUTY CLERK: Alternatives:

15 If you answered "Yes" to Question 1 or Question 2,
16 and "Yes" to Question 3, please proceed to Question 4.

17 Question 4 -- I beg your pardon.

18 III. Damages Under Title VII and Section 1981.

19 Question 4. Has plaintiff proven by a preponderance
20 of the evidence that she suffered compensatory damages for
21 race discrimination as noted by a "Yes" response to questions
22 1, 2, or 3?

23 THE FOREPERSON: Yes.

24 THE DEPUTY CLERK: If you answered "Yes" to
25 Question 4, please proceed to Question 5 and provide the

1 amount of compensatory damages that you award for race
2 discrimination.

3 Compensatory damages:

4 Question 5. What amount of money do you award
5 plaintiff as compensatory damages for violation of her
6 federally protected right not to be discriminated against in
7 employment on account of her race?

8 THE FOREPERSON: \$300,000.

9 THE DEPUTY CLERK: Please proceed to the next
10 question.

11 Punitive damages:

12 Question 6. Do you find that plaintiff has proven by
13 a preponderance of the evidence that when defendant terminated
14 plaintiff, it did so with reckless indifference to plaintiff's
15 federally protected right not to be discriminated against in
16 employment on account of her race?

17 THE FOREPERSON: Yes.

18 THE DEPUTY CLERK: If you answered "Yes" to
19 Question 6, please proceed to Question 7.

20 What amount of money do you award plaintiff as
21 punitive damages for violation of her federally protected
22 right not to be discriminated against in employment on account
23 of her race?

24 THE FOREPERSON: \$12,500,000.

25 THE DEPUTY CLERK: Please proceed to Question 8.

1 IV. Race discrimination (New Jersey Law Against
2 Discrimination):

3 Question Number 8. Do you find that plaintiff has
4 proven by a preponderance of the evidence that defendant
5 violated the New Jersey Law Against Discrimination when it
6 terminated plaintiff?

7 THE FOREPERSON: Yes.

8 THE DEPUTY CLERK: If you answered "Yes" to
9 Question 8, please proceed to Question 9.

10 V. Damages under New Jersey Law Against
11 Discrimination:

12 Question 9. Has plaintiff proven by a preponderance
13 of the evidence that she suffered compensatory damages for
14 race discrimination as noted by the "Yes" response to
15 Question 8?

16 THE FOREPERSON: Yes.

17 THE DEPUTY CLERK: If you answered "Yes" to
18 Question 9, please proceed to Question 10 and provide the
19 amount of compensatory damages that you award for race
20 discrimination.

21 Question 10. What amount of money do you award
22 plaintiff as compensatory damages for violation of plaintiff's
23 state-protected right not to be discriminated against in
24 employment on account of her race?

25 THE FOREPERSON: \$300,000.

1 THE DEPUTY CLERK: Please proceed to the next
2 question.

3 Question 11. Do you find that the plaintiff -- that
4 plaintiff has proven by clear and convincing evidence that at
5 least one member of defendant's upper management employees
6 acted in wanton and willful disregard of plaintiff's right not
7 to be discriminated against in employment on account of her
8 race?

9 THE FOREPERSON: Yes.

10 THE DEPUTY CLERK: If you answered "Yes" to
11 Question 11, please proceed to Question 12.

12 Question 12. What amount of money do you award
13 plaintiff as punitive damages for violation of her
14 state-protected right not to be discriminated against in
15 employment on account of her race?

16 THE FOREPERSON: \$12,500,000.

17 THE DEPUTY CLERK: Very well.

18 THE COURT: All right. You may be seated.

19 Request to have the jury polled?

20 MR. HARRIS: Yes, Your Honor. Please.

21 THE COURT: All right. Please poll the jury.

22 THE DEPUTY CLERK: Juror Number 1, do you agree with
23 the verdict as it's been stated by the foreperson?

24 JUROR NUMBER 1: Yes.

25 THE DEPUTY CLERK: Juror Number 2, do you agree with

1 the verdict as it's been stated by the foreperson?

2 JUROR NUMBER 2: Yes.

3 THE DEPUTY CLERK: Jury Number 3, do you agree with
4 the verdict as it's been stated by the foreperson?

5 JUROR NUMBER 3: Yes.

6 THE DEPUTY CLERK: Juror Number 4, do you agree with
7 the verdict as it's been stated by the foreperson?

8 JUROR NUMBER 4: Yes, I do.

9 THE DEPUTY CLERK: Jury Number 5, do you agree with
10 the verdict as it's been stated by the foreperson?

11 JUROR NUMBER 5: Yes.

12 THE DEPUTY CLERK: Juror Number 6, do you agree with
13 the verdict as it's been stated by the foreperson?

14 JUROR NUMBER 6: Yes, sir.

15 THE DEPUTY CLERK: Juror Number 7, do you agree with
16 the verdict as it's been stated by the foreperson?

17 JUROR NUMBER 7: Yes.

18 THE DEPUTY CLERK: And, Juror Number 8, do you agree
19 with the verdict as it's been stated by the foreperson?

20 THE FOREPERSON: Yes.

21 THE DEPUTY CLERK: Very well.

22 THE COURT: All right. I'll order that the Jury
23 Verdict Form be signed.

24 Members of the jury, that concludes your service, and
25 I want to thank you for your participation in this case, not

1 only on behalf of myself but on behalf of all the judges that
2 sit in the United States District Court for the District of
3 New Jersey. We thank you for participating in this most
4 important public service.

5 At this point, I would ask you just to go back to the
6 jury room and wait for some further instructions from me. It
7 will not be long.

8 Thank you.

9 (Jury out.)

10 THE COURT: Please be seated.

11 Counsel, the issue that remains is the front pay and
12 back pay, and I think there might be some other matters that
13 have to be resolved in this case. But perhaps counsel can at
14 this point, now that you have a jury verdict, confer and see
15 whether or not you can't come to some agreement on some
16 matters. All right?

17 MR. HARRIS: Yes, sir.

18 THE COURT: All right. So is there anything else
19 anyone wants to put on the record at this point?

20 MS. MATTIACCI: No, Your Honor. Thank you.

21 MR. HARRIS: I have nothing at this point.

22 THE COURT: All right. I want to thank both counsel
23 for their efforts in this case. When counsel acts in the best
24 interests of their client and makes a professional
25 presentation, it certainly advances the cause of justice, and

1 we saw that from all concerned in this case.

2 So with that, we'll stand in recess now.

3 I always go back and thank the jury personally for
4 their service, and I'll do so now.

5 All right. We'll stand in recess.

6 (Proceedings concluded at 3:34 p.m.)

7 - - -

8 I certify that the foregoing is a correct transcript
9 from the record of proceedings in the above-entitled matter.

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11 /S/ Ann Marie Mitchell 12th day of June, 2023

12 Court Reporter/Transcriber Date

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